



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Proposed Sidewalk Installation, Repair, and Liability Policies and Provide Direction to Staff as Needed

MEETING DATE: August 17, 2005

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt a resolution approving proposed sidewalk installation, repair, and liability policies and provide direction to staff as needed.

BACKGROUND INFORMATION: At the March 22, 2005 Shirtsleeve Session, a discussion took place with the City Council regarding the installation of new sidewalk where sidewalks do not currently exist. As a result of that discussion and the need to update our sidewalk maintenance policies, staff has compiled the following recommendations for implementation following Council discussion and direction.

The goals of the recommended changes are to:

- Improve the City's sidewalk system to encourage walking and improve safety by reducing the number of defects in the sidewalk
- Improve the sidewalk system for persons with disabilities
- Reduce the City's liability exposure and cost
- Utilize opportunities provided by State law to place costs with the appropriate party
- Develop a procedure that is efficient to administer

Staff Policy Recommendation:

- Provide City grant funding for installation of new sidewalks at "gap" locations in a two-phase program. Phase 1 projects would be "small projects" (one, two or three adjacent parcels missing sidewalk only) with voluntary 50% City/50% owner funding. 100% funding would be provided for disabled persons meeting low-income criteria as for the City utilities SHARE program. For other low-income owners meeting the same criteria, a deferral program will be available. This would be a six-year program. Staff would notify all affected property owners of the program and handle installation on a first-come, first-served basis. The Phase 2 program would consist of the few larger areas (four or more parcels) and any remaining parcels from Phase 1 in which property owners declined to participate. The cost would be 100% property owner and the low-income deferral would also apply. Staff will report back to Council after the completion of Phase 1.
- Revise the Municipal Code to place maintenance liability responsibility on the property owner. This would include driveways and curb and gutter.
- Provide City grant funding for maintenance work with a 50% grant for locations affected by a City tree. Other locations would be at the property owner's expense.
- Adopt a standardized payment/deferral program with the following elements:
 - Waive encroachment permit fees for property owners who undertake installation/maintenance work without requiring formal notice
 - Allow payments for up to one year without interest if property owner agrees to pay
 - Allow deferral until time of transfer of ownership (with interest) for low-income property owners
 - Authorize the City Manager to file liens with the County Assessor and/or Tax Collector as applicable per the above agreements

APPROVED: _____

Blair King, City Manager

Additional Background Information

The existing Public Works Department Curb, Gutter and Sidewalk Repair Policy was adopted in 1995 (Resolution No. 95-48) and subsequently amended in 1999 (Motion/Action May 5, 1999). A copy of the current policy is provided as Exhibit A. The policy primarily focuses upon repair and maintenance activities and has some deficiencies pertaining to driveways and responsibility for repairs following injury claims. It does not take into account recent court decisions regarding liability.

With regard to new sidewalk installation (outside of development requirements), City Council in 1999 directed staff to begin using Measure K Local Street Repair funds to install new sidewalk along Turner Road at a number of isolated locations with existing homes and to develop a policy for an ongoing program to install sidewalk where none exists. While some additional work was done under this direction, a formal policy covering the installation of new sidewalks at developed parcels was not adopted.

The Lodi Municipal Code requires sidewalk installation (along with other public improvements to meet City Standards) when the value of a building remodel exceeds the threshold amount (currently \$37,000; adjusted every July 1) and sidewalk is required as part of the public improvements in new development.

City Council was presented on March 22, 2005, with a comprehensive City-wide listing of locations of missing sidewalk and curb, gutter and sidewalk throughout the community. The total cost of constructing the missing facilities was estimated to be in excess of \$3.5 million.

At that time, staff was directed to return with a substantially pared-down program focused upon developed residential areas, gaps of three parcels or less, and delivery strategies. The attached Exhibit B presents the locations of missing sidewalks at existing residential sites at these locations. The recommended delivery strategy is centered about a defined funding, small and large projects, prioritization criteria, and special cases.

The total of missing curb, gutter and sidewalk areas represent approximately \$834,000 in construction work. A good portion of this work consists of one, two, or three adjacent parcels that would be defined as "small projects" having a construction value of \$443,000 (Exhibit B). This would exclude the Kristmont Acres area where property owners have made it clear they are not interested in new sidewalks and past Council direction has supported them. An annual funding level of \$50,000 per year would complete the small projects in approximately nine years if 100% City-funded. At 50% as recommended, the time frame is approximately six years, depending on property owner participation, cost increases and the budget process.

A range of funding participation could be considered. This could include 100% City-funded, 50% City/50% property owner or 100% property owner. A 50/50 funding strategy would effectively reduce the completion period by half. City Council could also consider alternative payment methods including but not limited to low-interest loans and deferred payment agreements with various mechanisms to trigger repayment.

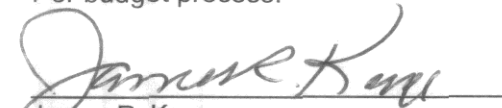
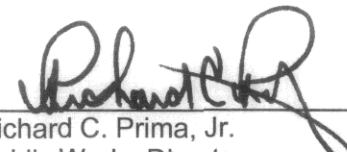
Regarding maintenance and liability, the Streets and Highways Code sets up a statutory procedure for the economic obligation for maintaining sidewalks to fall to the property owner. Under the Streets and Highways Code, the City may compel abutting property owners to maintain sidewalks free from dangerous conditions. Recent court cases have established that property owners are responsible for sidewalk maintenance and liability provided City Ordinance establishes this condition. Past history of City maintenance efforts have averaged approximately \$100,000 per year for the past five years. On average, the City has paid \$20,000 per year for trip-and-fall claims. However, recent claims will raise this average. Budgetary constraints lead to the recommendation that sidewalk maintenance efforts be increasingly shifted to the property owners as allowed by State law. A memo from the City's Risk Manager describing this issue in more detail is attached (Exhibit C), along with copies of applicable State law (Exhibit D). Following Council approval of the policy, the ordinance will be brought back for adoption.

FISCAL IMPACT:

Street Fund (Annual Amounts)
\$50,000 (New Installations)
\$25,000 (Maintenance)

FUNDING AVAILABLE:

Per budget process.


James R. Krueger
Richard C. Prima, Jr.
Public Works Director

Prepared by F. Wally Sandelin, City Engineer

RCP/FWS/pmf

Attachments



CITY OF LODI

PUBLIC WORKS DEPARTMENT

Exhibit A

POLICIES AND PROCEDURES

STREETS - 6

CURB, GUTTER & SIDEWALK REPAIR POLICY

5/5/99

Resolution 95-48 adopted by the City Council at its meeting of April 5, 1995:

I. NOTICE AND ACTION

- A. Property owners or tenants have the responsibility to report to the City of Lodi all defective curb, gutter and sidewalk fronting their property. (For purposes of this Policy, sidewalk includes portions of driveways within the right of way.)
- B. The Street Superintendent will inspect and classify sidewalk repairs for action per this Policy. Generally, offsets or other defects less than 3/4" are considered minor and require no further action.

II. SIDEWALK REPAIR

- A. TEMPORARY PATCHING - The City shall place a temporary patch on sidewalks where there is 3/4" - 1 1/2" vertical offset or minor irregularities. This will be done at no charge to the property owner. The property owner or tenant has the responsibility to notify the City of any change in the condition of the sidewalk or the patched area.
- B. SIDEWALK REPLACEMENT - When vertical offset is greater than 1 1/2", sidewalks shall be processed for removal and replacement on a priority basis. These areas will also be temporarily patched until replaced.
 - 1. Sidewalk replacement at City expense is done under the following conditions:
 - a. Damage caused by City-maintained trees. (City-maintained trees are only those trees located in the parkways between the curb and sidewalks or those fronting City-owned property.)
 - b. Damage due to City utility cuts
 - c. Damage due to heat expansion
 - 2. Property owner shall replace sidewalk where the hazardous condition is caused by something other than the above categories. The property owner shall have a licensed contractor do the work within a prescribed time. If, after formal notice by the City, the repairs are not completed within that time, the City shall make the repairs and assess the property owner.

III. CURB AND GUTTER MAINTENANCE

- A. Curb and gutter which is damaged by City-maintained trees, City utility cuts or heat expansion will normally be replaced by the City at the time damaged sidewalk is replaced or with street improvement projects.
- B. Curb and gutter which is damaged by property owner's trees shall be replaced by the property owner at their expense.

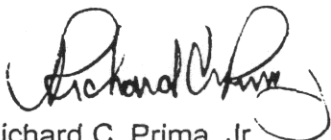
IV. TREE MAINTENANCE

- A. The City shall be responsible for root surgery on all City-maintained trees where it is required. City shall remove City-maintained trees when required under City's adopted Tree Policy. This work will be done in conjunction with the replacement of the sidewalk and/or the curb and gutter.
- B. Root surgery on privately-owned trees is the responsibility of the property owner.

Adopted by the City Council by motion action at its meeting of May 5, 1999:

V. SIDEWALK/BASEMENT ENCROACHMENTS

- A. New basement encroachments into the sidewalk area are prohibited.
- B. Existing basement encroachments shall either be abandoned by the property owner or be covered by an encroachment permit, issued administratively, in which the property owner assumes maintenance responsibilities and provides standard insurance coverage and certificates.
- C. When the City initiates replacement of adjacent curb, gutter and/or sidewalk as part of a capital improvement project, or under the maintenance conditions described in the City's sidewalk repair policy, the City shall bear the cost of resetting serviceable basement access doors. The property owner shall provide a new door set, if necessary, and a structural "roof" for additional basement encroachments on which the City can install sidewalk. As an option, if the property owner elects to have a basement access/encroachment abandoned, the City will remove the access, backfill, and replace sidewalk and pay for the necessary wall at the building foundation.
- D. When the City initiates replacement due to conditions which are the property owner's responsibility under the maintenance conditions described in the City's sidewalk repair policy, the property owner shall bear all costs for repairs except if the property owner abandons the basement access, then the City will participate as in C) above.
- E. The City Manager may authorize a one-time replacement of basement access doors, at City expense, in conjunction with circumstances described above within Zone A-1 of the Lodi Central City Revitalization Assessment District, 95-1, provided the property owner complies with Section B above.



Richard C. Prima, Jr.
Public Works Director

RCP/lm

District	APN	Address	Direction	Street	CG&S Missing Linear Ft	Sidewalk Missing Linear Ft	Notes
2	06207016	1524		Academy		21	
1	04320101	230	N	Central		52	On Railroad
2	04710003	1027	S	Central		18	On Concord
2	04708021	1101	S	Central		75	On Poplar
2	04737016	721	S	Cherokee		117	
2	04737016B	721	S	Cherokee		75	On Harold
2	04739002	901	S	Cherokee	241		On Vine
2	04739002	901	S	Cherokee		178	Asphalt walk and berm
2	06206040	1406	S	Cherokee	68		
2	06208007	1509	S	Cherokee		100	Asphalt walk
2	06208008	1515	S	Cherokee		65	Asphalt walk
2	04713014	234		Cherry		50	Asphalt walk
3	04516029	1101	S	Church		102	On Park
3	04515033	1300	S	Church		18	On Tamarack
1	04905010	46	N	Cluff		56	
1	04905058	50	N	Cluff		58	
6	02731006	2025		Cochran		50	
6	02731005	2033		Cochran		48	
6	02731004B	2041		Cochran	90		On Peach
6	02731004	2041		Cochran		75	
6	02711009	2201		Cochran	110		On Willow
6	02732001	2311		Cochran	232		
2	04741029	700		Delores		54	On Lloyd
2	04741008	801		Delores		88	
2	04741008B	801		Delores		56	On Woodrow
2	04702024	106		Flora		53	
2	04702025	108		Flora		38	
4	04119026	10		Forrest		52	
4	04119012	16		Forrest		68	
1	04319002	120		Garfield		56	
2	04732212	727	S	Garfield		12	
2	04732214	731	S	Garfield		35	
2	04738001	800	S	Garfield		67	
2	04738001B	800	S	Garfield		100	On Maple
2	04738002	808	S	Garfield		71	
2	04738011	812	S	Garfield		44	
2	04738010	816	S	Garfield		42	
2	04738009	820	S	Garfield		52	
2	04731401	822	S	Garfield		51	
2	04731404	840	S	Garfield	120		On Vine
2	04731402	845	S	Garfield	300		On Vine
2	04739009	939	S	Garfield		62	
2	04729015	1049	S	Garfield		62	
2	04729015B	1049	S	Garfield		106	On Poplar
2	06229025	311	E	Harney		180	Asphalt walk
2	06229026	325	E	Harney		100	Asphalt walk
6	05821004	1649	W	Harney		110	
6	05821003	1749	W	Harney		224	
4	03731044B	201	S	Hutchins		135	On Walnut

District	APN	Address	Direction	Street	CG&S Missing	Sidewalk Missing	Notes
4	03731044	201	S	Hutchins		11	Asphalt walk
3	06249001	1834	S	Hutchins		70	
6	03304017	1458		Iris	216		
2	04727020	305	E	Kettleman		120	On Washington
1	04123021	110		Lawrence		62	
1	04123022	116		Lawrence		58	
3	04513011	1245	S	Lee		106	On Tamarack
4	04125004	1050		Lincoln		27	
4	04125002	1051		Lincoln		27	
1	04123034	115	E	Lockeford		65	Asphalt walk
1	04123035	121	E	Lockeford		90	Asphalt walk
1	04123035B	121	E	Lockeford		84	On Stockton
1	04321007	646	E	Lockeford		68	
1	04903004B	677	E	Lockeford	139		On Beckman
1	04903004	677	E	Lockeford		64	
4	03726010	301	W	Locust		87	On Pleasant
4	03726009	307	W	Locust		90	On Pleasant
4	03722111	601	W	Locust		79	On California
6	02713101	2300	W	Lodi		100	On Kristmont
6	02709003	2340	W	Lodi		150	On Cabrillo
1	04123020	350	N	Main		105	
1	04123020B	350	N	Main	74		On Main
2	04714004	206		Maple		53	
2	04731112	454		Maple		115	On Garfield
2	04732216B	455		Maple		128	On Garfield
2	04732216	455		Maple		70	
2	04732401B	501		Maple		142	On Garfield
2	04732401	501		Maple		97	
2	04732408	541		Maple		55	
2	04730025	415		Mission		66	
2	04730025B	415		Mission		29	On Wellswood
2	04739013B	425		Mission		83	On Wellswood
2	04739013	425		Mission		56	
1	04905007	1209		Mounce		50	
1	04306402	208	E	Oak		30	Asphalt walk
3	04516019	115		Park		92	
3	04516018	116		Park		94	
3	03107003	621		Park		160	
3	03107002	701		Park		57	
5	03903013	901		Parkview		26	
5	03903012	905		Parkview		59	
5	03904001	906		Parkview		145	
5	03904001B	906		Parkview		74	On Lakehome
5	03903010	909		Parkview		64	
5	03903008	915		Parkview		38	
6	02731002B	731		Peach	55		On Cochran
1	04323001	604	E	Pine		199	
1	04323001B	604	E	Pine		130	On Cherokee
1	04906002	870	E	Pine		66	
1	04905016	1205	E	Pine	84		

District	APN	Address	Direction	Street	CG&S Missing	Sidewalk Missing	Notes
1	04905015	1209	E	Pine	88		
3	04516039	1100	S	Pleasant		20	On Park
2	04710036	305		Poplar	141		On Washington
2	04710021B	321		Poplar	91		On Priebe
2	04710021	321		Poplar	51		
2	04729016	435		Poplar		52	
1	04320105	408		Railroad		40	
1	04320107	412		Railroad		42	
1	04320114	426		Railroad		31	
1	04320116	428		Railroad		40	
2	04716203	212		Redwood		38	
2	04716204	216		Redwood		41	
2	04715002	228		Redwood		53	
2	04715003	232		Redwood		56	
1	04309008	216		Rush		62	
1	04308709	219		Rush		54	
1	04308715	225		Rush		62	
1	04309011	228		Rush		60	
1	04309001	238		Rush		32	
4	04121017	401	N	Sacramento		124	On Deforce
3	04523013	621	S	Sacramento		23	On Spruce
3	04524008	721	S	Sacramento		37	
4	04113004	727	N	School		88	On Louie
3	04523019	604	S	School		100	On Tokay
3	04509024	843	S	School		76	
3	04509023	845	S	School		38	
3	04517039	901	S	School		63	On Vine
3	04516004B	1001	S	School		106	On Sierra Vista
3	04516004	1001	S	School		81	
3	04516005	1007	S	School		57	
3	04516008B	1029	S	School		120	On Park
3	04516008	1029	S	School		106	Brick walk
3	04516009	1101	S	School		130	
3	04516013	1165	S	School		128	On Sycamore
3	04515050	1301	S	School		117	On Tamarack
3	04529023	1304	S	School		50	
3	04529009	1308	S	School		50	
3	04529008	1310	S	School		50	
3	04523014	9		Spruce		42	
1	04123033	309	N	Stockton		41	
1	04123033B	313	N	Stockton		27	
1	04123032	319	N	Stockton		39	
2	04716132	726	S	Stockton		130	On Redwood
2	04716201	730	S	Stockton		91	On Redwood
2	04716214	748	S	Stockton		94	On Maple
2	04714051B	802	S	Stockton		45	On Maple
2	04714051	802	S	Stockton		37	
2	04713029	848	S	Stockton		55	On Vine
2	04705008	1121	S	Stockton		50	
2	04705014	1241	S	Stockton		46	

EXHIBIT B

8/11/2005


District	APN	Address	Direction	Street	CG&S Missing	Sidewalk Missing	Notes
3	04512302	102		Sycamore		124	
3	04512302B	102		Sycamore		65	On School
3	04516014	115		Sycamore		104	
3	04512312	115		Tamarack		95	
3	04523018	16	W	Tokay		50	
5	03903014	1140	W	Turner		90	On Parkview
2	04712018	332	E	Vine		53	
3	04517038	110	W	Vine		90	
2	06208018	1408		Voelker		60	
2	06208019	1416		Voelker		47	Asphalt walk
2	04715007	739	S	Washington		33	
2	04715008	749	S	Washington		73	
2	04715008B	749	S	Washington		107	On Maple
2	04714021	817	S	Washington		42	
2	04714022	819	S	Washington		43	
2	04714022B	819	S	Washington		56	On Cherry
2	04727022	1321	S	Washington		99	
2	04741004	1004		Woodrow		50	
				Totals	2100	10922	

Memorandum

City of Lodi Human Resources Department

TO: City Council

THROUGH: Blair King, City Manager

FROM: Kirk Evans, Risk Manager 

DATE: August 17, 2005

SUBJECT: Sidewalk Maintenance and Liability

The following memo was sent to City Council March 30, 2005 - I am including this with the August 17 Council Communication regarding sidewalk maintenance issues as supplemental background information:

Given that City Council conducted a shirtsleeve session 3/22/2005 on the subject of sidewalk policies, you may find of interest the following information regarding sidewalk maintenance and liability. It is anticipated that at some point in the future City Council may want to take further action on this matter.

In 1941, the State of California enacted Streets and Highways Code section 5610, which states in part:

“The owners of lots...fronting on any portion of a public street...shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience...”

Section 5610 describes a process whereby the designated Streets Superintendent may notify a property owner to repair a damaged sidewalk. If repairs are not made, the Streets Superintendent can perform the work and, after a hearing held before City Council, a lien may be placed on the property for the cost of repairs.

Section 5610 is valuable insofar as it provides a financing mechanism for the repair and maintenance of damaged sidewalk areas (“sidewalk” is defined as a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk).

However, section 5610 does not change the common law as it pertains to liability for personal injuries occurring on a sidewalk. For many years, cities throughout California assumed the section allowed cities to transfer liability to property owners. It does not. It

imposes a duty on the part of the property owner to the city to maintain a sidewalk. It does not impose liability on the property owner should someone be injured on that sidewalk. The City of San Jose's experience changed that incorrect assumption.

Through a series of court cases, the City of San Jose learned that liability cannot be imposed on property owners via Streets and Highways Code section 5610. Liability can however be imposed through adoption of a properly worded ordinance. The City of San Jose therefore designed, and in April 1990 adopted, a sidewalk repair and maintenance ordinance. The key element of San Jose's ordinance is:

14.16.2205 - Liability for injuries to public.

The property owner required...to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition...any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury.

The ordinance expressly provides that property owners owe a duty of care to members of the public to keep and maintain sidewalk areas in a safe, non-dangerous condition. In December 2004, the California Appellate Sixth District Court upheld the validity of San Jose's ordinance finding in part that the imposition of a duty of care on an abutting landowner serves an important public purpose by providing property owners with an incentive to maintain the sidewalks adjacent to their property in a safe condition. The court's ruling that the ordinance is valid – in effect, makes it an even stronger tool for use by cities throughout California.

The court further held that San Jose's ordinance does not absolve the city of responsibility for dangerous conditions on a public sidewalk, rather, it provides an additional level of responsibility for the maintenance of safe sidewalks on the owner whose property is adjacent to and abuts the sidewalk. If, for example, a city were to receive actual notice, or in some instances constructive notice, of a truly dangerous condition and do nothing about it, then the city could still be deemed liable for a portion of the overall liability assessed. Nevertheless, the establishment of this ordinance does accomplish the following:

- The creation of the potential for liability provides an additional incentive for property owners to repair sidewalk areas. Property owners are in the best position to assess the condition of sidewalks on a day-to-day basis. Paying the relatively low cost of sidewalk repair today suddenly appears attractive when compared to the costs which might be presented by an injured pedestrian tomorrow.
- The existence of such an ordinance virtually ensures participation of the adjoining property owner's insurance carrier towards settlement of trip-and-fall claims. This would minimize pay-outs on the part of the City of Lodi. Even if an injured pedestrian fails to file suit against the property owner (claims/suits are usually filed against the City) the

City can now cross-complain against the property owner, thereby implicating the property owner's insurance policy.

For the foregoing reasons, Council may want to consider adoption of a similar ordinance.

I would like to add the following comments to my March 30 Memorandum

The Streets Division of the Public Works Department conducts regular surveys of sidewalk infrastructure throughout the City. Since 1993 the Division has made a concerted effort to reduce the number of sidewalk defects from a count of 12,000 - to 4,000 today. Keep in mind that defects can be as little as a half inch deflection. Not only does the Division conduct a proactive repair program (as evidenced by the significant reduction in defects), they also ensure repairs are effected by the adjacent property owner whenever the City receives notice of a dangerous sidewalk condition.

However, at the present time, with regard to the 4,000 current defects, homeowners are not notified they must repair defects resulting from some condition of their property, e.g. roots from a tree located on the owner's property pushing the sidewalk slab upward and causing a deflection. By notifying property owners of the condition of the sidewalk adjoining their property, as well as their obligation to make repairs, the City would increase the rate at which these defects are removed from City sidewalks. This would require greater time and effort on the part of Streets Division staff. The benefits of this effort would be a decrease in general liability trip and fall claims while eliminating expense on the part of the City for labor and materials needed to actually repair these sidewalks.

STREETS AND HIGHWAYS CODE

SECTION 5600-5602

5600. As used in this chapter "sidewalk" includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk or of any such park or parking strip.

5601. This chapter shall only apply to maintenance and repair proceedings, whether upon work originally done under this division or otherwise, and shall not be used for the construction of new improvements. The "Special Assessment Investigation, Limitation and Majority Protest Act of 1931" shall not apply to proceedings taken under this chapter.

5602. This chapter constitutes a separate and alternate procedure for performing the work specified herein and, except for the provisions of Part 5 of this division, no other provisions of this division shall apply to proceedings instituted hereunder.

STREETS AND HIGHWAYS CODE

SECTION 5610-5618

5610. The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

5611. When any portion of the sidewalk is out of repair or pending reconstruction and in condition to endanger persons or property or in condition to interfere with the public convenience in the use of such sidewalk, the superintendent of streets shall notify the owner or person in possession of the property fronting on that portion of such sidewalk so out of repair, to repair the sidewalk.

5612. Notice to repair may be given by delivering a written notice personally to the owner or to the person in possession of the property facing upon the sidewalk so out of repair, or by mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the person owning such property as shown in the records of the office of the clerk.

5613. The postal card shall contain a notice to repair the sidewalk so out of repair, and the superintendent of streets shall, immediately upon the mailing of the notice, cause a copy thereof printed on a card of not less than 8 inches by 10 inches in size, to be posted in a conspicuous place on the property. In lieu of posting a copy of the mailed notice on the property as provided in this section, the superintendent of streets may, not less than seven days nor more than 10 days after the mailing of the first postal card notice, mail an additional postal card, postage prepaid, marked "Second Notice," to the person to whom the first postal card notice was addressed. The second notice shall otherwise contain the material required by this article, but shall not extend the time for commencing repairs specified in Section 5614.

5614. The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the repair and shall further specify that if the repair is not commenced within two weeks after notice is given and diligently

and without interruption prosecuted to completion, the superintendent of streets shall make such repair, and the cost of the same shall be a lien on the property.

5614.1. The legislative body may adopt a resolution determining that bonds shall be issued and assessments collected and enforced pursuant to Part 5 of this division. In such event, the notice to repair shall specify that bonds shall be issued to represent the security of the unpaid assessments, payable over a period of not to exceed six years, and shall further recite a maximum rate of interest to be paid on the indebtedness, which shall not exceed 7 percent a year, payable semiannually.

5615. If the repair is not commenced and prosecuted to completion with due diligence, as required by the notice, the superintendent of streets shall forthwith repair the sidewalk. Upon the written request of the owner of the property facing the sidewalk so out of repair, as ascertained from the last equalized assessment roll of the city, or as shown in the records of the office of the clerk, the superintendent may repair any other portion of the sidewalk fronting on the property that is designated by the owner. The superintendent shall have power to prescribe the form of the written request. The cost of repair work done by request pursuant to this section shall be a part of the cost of repairs for which, pursuant to this chapter, subsequent notices are given, hearings held and assessment and collection procedures are conducted.

5616. Upon the completion of the repair, the superintendent of streets shall cause notice of the cost of the repair to be given in the manner specified in this article for the giving of notice to repair, which notice shall specify the day, hour and place when the legislative body will hear and pass upon a report by the superintendent of streets of the cost of the repair together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such repair and any other interested persons. If bonds are to be issued, the notice shall also contain the information required by Section 5614.1.

5617. Upon the completion of the repair, the superintendent of streets shall prepare and file with the legislative body a report specifying the repairs which have been made, the cost of the repairs, a description of the real property in front of which the repairs have been made and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. Any such report may include repairs to any number of parcels of property, whether contiguous to each other or not.

5618. Upon the day and hour fixed for the hearing the legislative body shall hear and pass upon the report of the superintendent of streets, together with any objections or protests which may be raised by any of the property owners liable to be assessed for the work of making such repair and any other interested persons. Thereupon the legislative body may make such revision, correction or modifications

in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The legislative body may adjourn the hearings from time to time. The decisions of the legislative body on all protests and objections which may be made, shall be final and conclusive.

STREETS AND HIGHWAYS CODE

SECTION 5625-5630

5625. The cost of the repair may be assessed by the legislative body against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the legislative body, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.

5626. The superintendent of streets may file in the office of the county recorder of the county in which the parcel of property is located, a certificate substantially in the following form:

NOTICE OF LIEN

Pursuant to the authority vested in me by the Improvement Act of 1911, I did, on the ____ day of ____, 19__, cause the sidewalk, curb, or park or parking strip, bulkheads, retaining walls, or other works (as the case may be) in front of the real property hereinafter described, to be repaired and improved, and the legislative body of said city (county, or city and county) did, on the ____ day of ____, 19__, by Resolution No. ____ assess the cost of such repair upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said city (county, or city and county), does hereby claim a lien on said real property in the sum of ____ dollars (\$____), and the same shall be a lien upon said real property until the said sum, with interest at the rate of ____ percent per annum, from the said ____ day of ____, 19__ (insert date of confirmation of assessment), has been paid in full and discharged of record.

The real property hereinbefore mentioned and upon which a lien is claimed, is that certain piece or parcel of land lying and being in the (name of city, or city and county) the county of ____, State of ____, and particularly described as follows:
(Description of property)

Dated this ____ day of ____, 19__.

Superintendent of streets

5627. From and after the date of the recording of the notice of lien, all persons shall be deemed to have had notice of the contents thereof. The notice of lien may include claims against one or more separate parcels of property, whether contiguous or not, together with the amount due, respectively, from each such parcel. The statute of limitation shall not run against the right of the city to enforce the payment of the lien. If any such lien is not paid the city may file and maintain an action to foreclose such lien in the same manner and under the same procedure, so far as applicable, as that under which delinquent bonds are foreclosed under this division.

5628. As an alternative method of collection of the amount of the lien, the legislative body, after confirmation of the report of the superintendent of streets, may order the notice of lien to be turned over to the assessor and the tax collector of the city, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land. If city taxes are collected by the county officials, the notice of lien shall be delivered to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

5628.1. The legislative body shall have the power, in its discretion, to determine that the payment of assessments of one hundred dollars (\$100) or more may be made in annual installments, not to exceed five, and that the payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the legislative body, not to exceed the rate permitted for bonds by Section 53531 of the Government Code. Interest shall begin to run on the 31st day after the confirmation of the assessments by the legislative body. Determinations of the legislative body shall be expressed by resolution at any time prior to the confirmation of the assessments.

5629. Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy, collection and enforcement of city taxes and county taxes are hereby made applicable to such special assessment taxes.

5629.1. If bonds are to be issued to represent the security of the unpaid assessments, upon confirmation of the report by the legislative body the superintendent of streets shall give notice to pay by mail and by publication substantially in the manner provided by Sections 4320 and 4321 of this code. The period for payment in cash stated therein shall be 30 days following the date of confirmation of the report. Upon completion of the cash payment period, the superintendent of streets shall file with the county recorder a certificate substantially in the form set out in Section 5626, giving notice therein that interest is payable at a rate to be fixed upon the sale of bonds, which rate shall not exceed the rate permitted for bonds by Section 53531 of the Government Code, and shall begin to run on the 31st day after the confirmation of the report. Thereafter the provisions of Part 5 (commencing with Section 6400) shall be applicable and payments on assessments at bond shall be made as therein provided. The bonds may be issued and sold as the legislative body directs and may be dated at any time after the expiration of the cash payment period.

5630. Whenever the property fronting on a sidewalk required to be maintained and repaired pursuant to the provisions of this chapter lies within one city or unincorporated territory of a county, and the sidewalk required to be so maintained and repaired lies within another city or unincorporated territory of a county, the superintendent of streets of the city or county having jurisdiction over the sidewalk shall have full authority to serve notices to repair and do all work contemplated by Articles 2 and 3 of this chapter, notwithstanding the fact that the property fronting on the sidewalk lies within another city or unincorporated territory of a county. The legislative body of the city or county within which the sidewalk has been repaired pursuant to the provisions of this chapter shall have jurisdiction to levy an assessment to pay the cost of any such sidewalk repairs against the parcel of property fronting on said sidewalk, notwithstanding the fact that said property lies within another city or unincorporated territory of a county and said assessment shall be a lien on said property for the amount thereof until the assessment and all interest thereon is paid or until it is discharged of record.

The provisions of Sections 5628 and 5629 of this code shall be applicable to the collection and enforcement of all liens levied pursuant to the provisions of this section and the amount so collected shall be paid to the treasurer of the city or county as the case may be which conducted the proceedings.

RESOLUTION NO. 2005-_____

DRAFT

A RESOLUTION OF THE LODI CITY COUNCIL RESCINDING RESOLUTION NO. 95-48, AND SUBSEQUENT 1999 AMENDMENT THERETO, RELATING TO THE SIDEWALK POLICY; HEREBY ADOPTING 2005 SIDEWALK INSTALLATION, REPAIR, AND LIABILITY POLICIES; AND FURTHER AUTHORIZING AND DIRECTING THE CITY MANAGER TO IMPLEMENT THE PROCEDURES

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WHEREAS, the existing Curb, Gutter and Sidewalk Repair Policy was adopted by Resolution No. 95-48 in 1995; and

WHEREAS, the City Council subsequently amended the Policy by motion action on May 5, 1999; and

WHEREAS, the City Council now desires to rescind Resolution No. 95-48 and the amendment thereto in 1999 and adopt a new policy.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby take the following actions:

- 1) Rescinds Resolution No. 95-48 and the 1999 amendment; and
- 2) Hereby adopts the 2005 Sidewalk Installation, Repair, and Liability Policies as attached hereto marked Exhibit A; and
- 3) Hereby authorizes and directs the City Manager to adopt such additional policies as are necessary to implement the Policies adopted herein.

Dated: August 17, 2005

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I hereby certify that Resolution No. 2005-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 17, 2005, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

2005-_____

City of Lodi**CURB, GUTTER & SIDEWALK POLICY****August 2005**

Resolution xx-xx adopted by the City Council at its meeting of August 17, 2005.

I. GOALS - The goals of this policy are to:

- a) Improve the City's sidewalk system to encourage walking and improve safety by reducing the number of defects in the sidewalk
- b) Improve the sidewalk system for persons with disabilities
- c) Reduce the City's liability exposure and cost
- d) Utilize opportunities provided by State law to place costs with the appropriate party
- e) Provide for procedures that are efficient to administer

II. NOTICE AND ACTION

- a) Property owners and tenants have the responsibility to report to the City of Lodi all defective curb, gutter and sidewalk fronting their property. (For purposes of this Policy, sidewalk includes portions of driveways within the right of way.)
- b) The Street Superintendent will inspect and classify sidewalk repairs for action per this Policy. Generally, offsets or other defects less than 3/4" are considered minor and require no further action except at locations where trip/falls occur which will be evaluated for repair/replacement.

III. SIDEWALK INSTALLATION

- a) Curb, gutter and sidewalk installation (and repair) is required with new development and with certain building permits per the Lodi Municipal Code.
- b) In other circumstances, the City will provide grant funding, as available, for new installations at residential properties. Phase 1 of the grant program consists of one, two or three adjacent parcels missing sidewalk only with voluntary 50% City and 50% property owner funding (100% grant for persons with full disability and low-income eligibility). This phase will extend through 2010. Phase 2 consists of remaining residential parcels from Phase 1 in which the owner declined to participate and other parcels and will be property-owner funded.
- c) City staff shall report to Council near the completion of Phase 1, prior to moving into Phase 2. The report shall include the then-current locations of missing sidewalk.

IV. SIDEWALK MAINTENANCE

- a) LIABILITY – Public liability for sidewalk (including curb, gutter and driveways) maintenance rests with the property owner per LMC §xx-xxx.
- b) TEMPORARY PATCHING - The City shall grind or place a temporary patch on sidewalks where there is 3/4" - 1 1/2" vertical offset or minor irregularities. This will be done at no charge to the property owner (up to three times, after which replacement is required). The property owner or tenant has the responsibility to notify the City of any change in the condition of the sidewalk or the patched area.
- c) REPLACEMENT - When vertical offset in sidewalk is greater than 1 1/2", the location shall be processed for removal and replacement. These areas will also be temporarily patched until replaced. Curb and gutter shall be replaced as necessitated by adjacent sidewalk work or if offsets are causing extended water holding or present a hazard. Driveways are entirely the responsibility of the property owner except as in d) below. Driveways shall not be modified to include pipes, fill or similar use of the gutter. Gutter encroachments

existing as of the adoption date of this policy may remain provided they are maintained to not impede water flow, street sweeping or pose a hazard to the public.

- d) CITY COST PARTICIPATION – The City will provide 50% of the cost of repairs in cases where a tree within the public Right of Way has caused the damage.

V. TREE MAINTENANCE

- a) The City shall be responsible for root surgery on all City-maintained trees where it is required. City shall remove City-maintained trees when required under City's adopted Tree Policy. This work will be done in conjunction with the replacement of the sidewalk and/or the curb and gutter.
- b) Root surgery on privately-owned trees is the responsibility of the property owner.

VI. FEES, PAYMENT & DEFERRAL

- a) Encroachment permit and administrative fees will be waived for property owners who undertake installation/maintenance without formal notice. Fees are applicable to cases in which the City (or its contractor) does the work and processes formal notices.
- b) The City will advance funds for installation or maintenance without interest if the property owner agrees to make payments over the course of 12 months and upon execution of a written payment agreement with the City.
- c) Property owners meeting low-income eligibility per the City's utility discount program (SHARE) may elect to defer maintenance costs until transfer of ownership with execution of a payment agreement. Fixed interest on the amount owed shall be established at the then-current Local Agency Investment Fund rate and accumulated interest shall be capped at 100% of the principal.
- d) The City Manager is authorized to establish procedures to implement this policy and to execute payment agreements pertaining to this policy and to file liens with the County Tax Collector and/or Recorder as appropriate to secure payment.

VII. SIDEWALK/BASEMENT ENCROACHMENTS

- a) New basement encroachments into the sidewalk area are prohibited.
- b) Existing basement encroachments shall either be abandoned by the property owner or be covered by an encroachment permit, issued administratively, in which the property owner assumes maintenance responsibilities and provides standard insurance coverage and certificates.
- c) When the City initiates replacement of adjacent curb, gutter and/or sidewalk as part of a capital improvement project, the City shall bear the cost of resetting serviceable basement access doors. The property owner shall provide a new door set, if necessary, and a structural "roof" for additional basement encroachments on which the City can install sidewalk. As an option, if the property owner elects to have a basement access/encroachment abandoned, the City will remove the access, backfill, and replace sidewalk and pay for the necessary wall at the building foundation.
- d) When the City initiates replacement due to conditions which are the property owner's responsibility under the maintenance conditions described in the City's sidewalk repair policy, the property owner shall bear all costs for repairs except if the property owner abandons the basement access, then the City will participate as in c) above.
- e) The City Manager may authorize a one-time replacement of basement access doors, at City expense, in conjunction with circumstances described above within Zone A-1 of the Lodi Central City Revitalization Assessment District, 95-1, provided the property owner complies with Section b) above.